

Daniel B. Beck, SBN 63865  
Evan Livingstone, SBN 252008  
Beck Law P.C.  
2681 Cleveland Avenue  
Santa Rosa CA 95403  
Phone: 707-576-7175  
Fax: 707-576-1878

Email: evanlivingstone@sbcglobal.net

Attorneys for Debtor(s)

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA**

In re	Lisa M Leandro	Case No.	09-12028
	Debtor(s)	Chapter	13

**DEBTOR'S MOTION FOR ORDER VALUING  
LIEN OF CITIBANK NA AS \$0**

To Secured Creditor **CITIBANK NA**

**Relief Requested**

Debtor(s) hereby move pursuant to FRBP Rule 3012 and 11 U.S.C. §§506, 1322 (b)(2) and 1327 for an order valuing the secured claim of **CITIBANK NA**, it successors and/or assigns (Creditor), at zero dollars (\$0), and for an order that the Lien may not be enforced, and shall be voided for all purposes, upon application by Debtor, when the Debtor completes her Chapter 13 plan payments and receives her discharge from the Court.

**The Motion**

1. Debtor(s) filed this Chapter 13 case on June 30, 2009. David Burchard is the duly appointed and acting Trustee to the bankruptcy estate.

1           2. This motion is filed pursuant to 11 U.S.C. §1322 to avoid and cancel a lien held by  
2           Creditor upon Debtor(s)' real property. This piece of real estate is the single-family dwelling  
3           described as 1155 Tyne Court, Santa Rosa, CA 95401. The Sonoma County Assessor's Parcel  
4           Number is APN 036-482-002-000 ("Real Property").

5           3. Debtor estimates the value of the Real Property to be \$311,350.

6           4. On or about 2/25/05, secured creditor Citimortgage Inc extended credit to Debtor(s)  
7           and Debtor(s) granted a security interest to Citimortgage Inc in the Real Property that was  
8           properly perfected with the recording of the first deed of trust. Debtor(s) are informed and  
9           believe that on the day the petition was filed the obligation to on this note had a principal balance  
10          of \$314,719. The loan number for this obligation is 2002506191.

11          5. On or about 9/21/06, secured creditor Citibank NA (Creditor) extended credit to  
12          Debtor and Debtor granted a security interest to Creditor in the Real Property that was properly  
13          perfected with the recording of the second deed of trust. Debtor(s) are informed and believe that  
14          on the day the petition was filed the obligation to Creditor had a principal balance of \$126,657.  
15          The loan number for this obligation is 500548-9222050354.

16          6. The Real Property is worth less than what is currently owed to the on the senior first  
17          Deed of Trust. Creditor's second Deed of Trust is entirely unsecured and there is no equity to  
18          support said lien.

19          7. The claim of Creditor predicated on such second Deed of Trust is wholly unsecured  
20          liens against the Real Property and accordingly is not protected by the anti-modification clause  
21          of Bankruptcy Code §1322. Creditor's junior lien claims should therefore be valued pursuant to  
22          11 U.S.C. §506 and Bankruptcy Rule 3012 at zero dollars (\$0) and, after such valuation, voided,  
23          canceled, extinguished and formally stripped off of Debtor(s)' Real Property so that it no longer  
24          remains a recorded lien or encumbrance on the Real Property. The claim of Creditor on its

1 second Deed of Trust should be paid only as a general unsecured claim Chapter 13 Plan and  
2 should not be paid as a secured claim for any amount whatsoever. *In re Zimmer* (9th Cir. 2002)  
3 313 F2d 1220, 1222-1225.

4 8. The 9th Circuit rule *In re Zimmer* allowing such wholly unsecured junior lien claim to  
5 be stripped off the Real Property through a Chapter 13 Plan is in harmony with all of the other  
6 Circuit decisions which have considered the issue. See *In re Lane* (6th Cir. 2002) 280 F3d 663,  
7 667-669; *In re McDonald* (3rd Cir. 2000) 205 F3d 606, 615; *In re Tanner* (11th Cir. 2000) 217  
8 F3d 1357; *In re Mann* (BAP 1st Cir. 2000) 249 BR 831; *In re Bartee* (5th Cir. 2000) 212 F3d  
9 277.

10 9. Bankruptcy Rule 3012 provides that the court may determine the value of a claim  
11 secured by a lien on property in which the estate has an interest on motion of any party in interest  
12 and after a hearing on notice to the holder of the secured claim and accordingly the within  
13 motion to determine and value Creditor's secured claim at zero (\$0) dollars in Debtor(s)' Chapter  
14 13 reorganization plan is proper.

15 **WHEREFORE**, Debtor(s) pray that the Court determine the Creditor's junior lien  
16 should be valued at zero dollars (\$0), that Creditor may take no action to enforce this lien, and  
17 for an order avoiding the lien should Debtor(s) complete this Chapter 13 Plan and receive a  
18 discharge.

19  
20 Date: November 24, 2009

BECK LAW P.C.

21 /s/ Dan Beck

22 by: Daniel B. Beck  
23 Attorneys for Debtor  
24